

1 STATES UNITED DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 FERNANDO HERNANDEZ, KENNETH CHOW,
5 BRYANT WHITE, DAVID WILLIAMS, MARQUIS ACKLIN,
6 CECILIA JACKSON, TERESA JACKSON,
7 MICHAEL LATTIMORE, and JUANY GUZMAN, Each
Individually, And On Behalf Of All Other
Persons Similarly Situated,

8 Plaintiffs,

9 -against- Index No:
12 CV 4339 (ALC) (JLC)

10 THE FRESH DIET, INC., LATE NIGHT EXPRESS
11 COURIER SERVICES, INC. (FL), FRESH DIET EXPRESS
12 CORP. (NY), THE FRESH DIET - NY INC. (NY),
13 FRESH DIET GRAB & GO, INC. (FL) a/k/a
14 YS CATERING HOLDINGS, INC. (FL) d/b/a
YS CATERING, INC. (FL), FRESH DIET EXPRESS
CORP. (FL), SYED HUSSAIN, Individually,
JUDAH SCHLOSS, Individually, and ZAIMI DUCHMAN,
Individually,

15 Defendants.

-----x

16 EXAMINATION BEFORE TRIAL of
17 the Plaintiff, DENNY DELAROSA, taken by
18 the Defendant, pursuant to Notice, held
19 at the offices of Kaufman, Dolowich,
20 Voluck & Gonzo, LLP, 100 William Street,
21 Suite 215, New York, New York 10038, on
22 October 28, 2013, at 1:55 p.m., before a
23 Notary Public of the State of New York.

24

25

[Page 2]

1
2 APPEARANCES:
3 THE HARMAN FIRM, PC
4 Attorney for Plaintiffs
5 200 West 57th Street, Suite 900
6 New York, New York 10019
7
8 BY: PETER J. ANDREWS, ESQ.
9
10 KAUFMAN, DOLOWICH, VOLUCK & GONZO LLP
11 Attorneys for Defendants
12 100 William Street, Suite 215
13 New York, New York 10038
14
15 BY: YALE POLLACK, ESQ.
16
17 FILE #: 055611-0002
18
19 ALSO PRESENT:
20
21 PAUL KROMPIERE, Spanish Interpreter
22
23
24
25

[Page 3]

1
2 FEDERAL STIPULATIONS
3
4 IT IS HEREBY STIPULATED AND AGREED
5 by and between the counsel for the respective
6 parties hereto, that the filing, sealing, and
7 certification of the within deposition shall be
8 and the same are hereby waived;.
9
10
11 IT IS FURTHER STIPULATED AND AGREED
12 that all objections, except as to the form of
13 the question, shall be reserved to the time of
14 trial.
15
16 IT IS FURTHER STIPULATED AND AGREED
17 that the within deposition may be signed before
18 any Notary Public with the same force and
19 effect as if signed and sworn to before this
20 Court.
21
22
23
24
25

[Page 4]

1
2 PAUL KROMPIERE, called as the
3 interpreter in this matter, was duly sworn by
4 a Notary Public of the State of New York to
5 accurately and faithfully translate the
6 questions propounded to the witness from
7 English into Spanish and the answers given by
8 the witness from Spanish into English.
9 -oOo-
10 DENNY DELAROSA, the witness
11 herein, having been first duly sworn by a
12 Notary Public of the State of New York, was
13 examined and testified through the interpreter
14 as follows:
15 EXAMINATION BY
16 MR. POLLACK:
17 Q. State your name for the record, please.
18 A. Denny DeLarosa.
19 Q. State your address for the record,
20 please.
21 A. 2405 1st Avenue, Apartment AG, New York,
22 New York 10035.
23 Q. Good afternoon, Mr. DeLarosa. My name
24 is Yale Pollack, and I represent the defendants
25 in this action. Today I'm going to be asking

[Page 5]

1 D. DeLarosa
2 you a series of questions concerning your
3 claims in this action.
4 If you don't understand any question I
5 ask, let me know, and I'll rephrase it to the
6 best of my ability. Please wait until I finish
7 asking my question before providing an answer.
8 Please answer all questions verbally.
9 MR. ANDREWS: That means no
10 nodding the head. You have to say yes
11 or no or whatever you say.
12 A. Yeah.
13 Q. If you need to take a break at any
14 point, just let me know. The only condition is
15 that if there's a question pending, I'm going
16 to ask you to answer the question before taking
17 the break.
18 A. Okay.
19 Q. Do you understand all those
20 instructions?
21 A. Yes.
22 Q. Are you taking any medications today?
23 A. No.
24 Q. Are you under the influence of drugs or
25 alcohol?

[2] (Pages 2 to 5)

[Page 6]

1 D. DeLarosa
 2 A. No.
 3 Q. Can you think of anything else that may
 4 impair your ability to truthfully respond to my
 5 questions today?
 6 A. I could answer any question you want.
 7 Q. Truthfully?
 8 A. Truthfully.
 9 Q. Did you review anything to prepare for
 10 today's deposition?
 11 A. No.
 12 Q. Did you speak with anyone in preparation
 13 for today's deposition?
 14 A. No, I haven't spoken to anybody. I just
 15 spoke with Fernando for ten minutes. With
 16 Fernando.
 17 Q. When?
 18 A. Half an hour ago. Forty minutes ago.
 19 Q. Did he call you, or did you call him?
 20 A. I called him because I wanted to confirm
 21 that I had to come here.
 22 Q. What did you speak about with
 23 Mr. Hernandez?
 24 A. I asked him that I was going to come
 25 here to find out what was going to happen. He

[Page 7]

1 D. DeLarosa
 2 said you have to go.
 3 Q. Anything else?
 4 A. We spoke about the case. He just told
 5 me tell the truth, just tell the truth.
 6 Q. Did he tell you anything else in terms
 7 of how you should testify today?
 8 A. No. He just said tell the truth about
 9 the time, the taxes, and all of that stuff.
 10 Q. Did you speak about the time?
 11 Did he tell you what time to tell me
 12 that you were working?
 13 A. What do you mean? I don't understand
 14 it.
 15 Q. Did you discuss the times that you
 16 worked with Mr. Hernandez?
 17 A. No. It was about the case that we were
 18 talking about.
 19 Q. What, specifically, about the case?
 20 A. That the hours and about what happened
 21 to my friend, that he uses his own vehicle the
 22 other day, and he had an accident with it.
 23 Q. Who?
 24 A. Zapata.
 25 Q. Alex Zapata?

[Page 8]

1 D. DeLarosa
 2 A. Oh, you know him, right? Alexander
 3 Zapata, yeah. When he was doing his route,
 4 coming from the route, because he's a driver,
 5 someone hit him in the back, and we were
 6 talking about that if he can -- if he could get
 7 involved in the case because we could almost
 8 win because it was a bus, so -- he was in
 9 Jersey about a year ago, and somebody stole his
 10 truck over there, his bus.
 11 Q. Alex's?
 12 A. Alex's, yeah, because this is what
 13 happened.
 14 Look, the company pays him to use the
 15 car, his car, so they pay for his gas, and they
 16 pay him a salary.
 17 Q. Is Alex a driver right now?
 18 A. Uh-huh.
 19 Q. Are you a driver right now?
 20 A. Yes, but I use their vehicles.
 21 Let's see. Currently, there's two
 22 vehicles, right. The kid that works at 5:00,
 23 he starts at 5:00, finishes at 10:00, and my
 24 shift is from 10:00 until 5:00 or 6:00. It
 25 depends, I mean, when you've done the route,

[Page 9]

1 D. DeLarosa
 2 so --
 3 Q. I'm just looking for clarification on
 4 some of the things you just said, so I'm just
 5 going to follow up.
 6 Let's get into some background, and then
 7 we'll get to some of the things you just said.
 8 Are you currently employed?
 9 A. Yes. Yes. Sorry. Yes.
 10 Q. Where are you employed?
 11 A. You mean a side job or what?
 12 Q. Do you consider yourself a full-time
 13 employee?
 14 A. Yes.
 15 I work with that company for, let's
 16 say -- I think it's -- Owen calls me at the
 17 time that I start my job shift because the bags
 18 of food are not ready yet. So as I told you,
 19 the kid starts at 5:00 and finishes at 10:00,
 20 and then I begin my route after that. I've
 21 done all the routes for the company, all the
 22 routes, except B because he never misses work.
 23 Q. Do you know the kid's name?
 24 A. No, because this is another thing here.
 25 There's only two vehicles, right, that are

[3] (Pages 6 to 9)

[Page 10]

1 D. DeLarosa
 2 working right now. So Bobby and Drew, they
 3 begin from 5:00 to 10:00, and then William and
 4 I begin after that.
 5 Q. When you say "Bobby and Drew," 5:00 p.m.
 6 to 10:00 p.m.?
 7 A. Even later. Sometimes 11:00 or 12:00.
 8 Depends on the time that they're done, and we
 9 have to wait until they're done.
 10 Q. I'm just going to, again, take us back a
 11 little bit. I just want you to listen to the
 12 question, and just answer the question I'm
 13 asking. We're going to get into the duties,
 14 the hours, all that stuff, so I just need you
 15 to listen and answer.
 16 Okay?
 17 You're currently a driver, correct?
 18 A. Exactly.
 19 Q. Is this for The Fresh Diet?
 20 A. Yes, for Fresh Diet, that's it.
 21 Q. Do you know the company Late Night
 22 Express?
 23 A. That's where I work, at that company.
 24 I got the checks here. This is a new
 25 check, like a month ago, and this is an old one

[Page 11]

1 D. DeLarosa
 2 (handing). I couldn't find a better one, so
 3 this is an old one (indicating). This is my ID
 4 (handing).
 5 Q. Do you have any other documents on your
 6 person regarding Late Night or The Fresh Diet?
 7 A. I don't have any more documents. This
 8 is everything I have, and I did have an
 9 accident. I had one in Brooklyn, and I have
 10 the documents for it if you need them.
 11 Q. Yes.
 12 MR. POLLACK: I'm going to
 13 request the documents for the accident
 14 in Brooklyn.
 15 MR. ANDREWS: What is the
 16 relevancy of an accident to the issues
 17 in this case?
 18 MR. POLLACK: I'm not answering
 19 that. I'm making the request. It's
 20 related to his job. It's relevant.
 21 MR. ANDREWS: You can put those
 22 away.
 23 Q. What are those?
 24 A. This is my license (indicating). This
 25 is what I was given downstairs (indicating).

[Page 12]

1 D. DeLarosa
 2 MR. POLLACK: I'm going to make
 3 copies of this. I'll be right back.
 4 (Whereupon, a recess was taken
 5 at this time.)
 6 Q. You had said that your current
 7 employer's Late Night --
 8 MR. ANDREWS: Objection.
 9 Q. -- is that correct?
 10 MR. ANDREWS: Objection.
 11 A. Yes.
 12 Q. How long have you been a driver for Late
 13 Night?
 14 A. Almost -- close to three years.
 15 Q. Do you remember when you started, the
 16 month and year?
 17 A. Don't remember. It's been three years
 18 now. I think it was February.
 19 Q. 2010?
 20 A. Something like that. I think so. I'm
 21 not exactly sure, but I got all the checks at
 22 home.
 23 Q. You do?
 24 A. All of them. I could check if you want.
 25 Q. Yes, if you can.

[Page 13]

1 D. DeLarosa
 2 You have the pay stubs, is that what it
 3 is?
 4 A. Yes. I have everything. I put it away.
 5 MR. POLLACK: I'm going to make
 6 a request for those documents as well.
 7 A. I got all the checks. I have the
 8 accident and two points that I got and I had to
 9 go to court for. Moving violation. I got two
 10 points because of that, doing the route. I
 11 have everything. I got all those documents.
 12 MR. POLLACK: I'm making a
 13 request. I want you to look for all
 14 those documents, and then give them to
 15 your attorney, and we'll deal with it
 16 accordingly.
 17 MR. ANDREWS: We'll take it
 18 under advisement.
 19 We object to the relevance of
 20 the two points for a moving violation
 21 and accident, but we will take it under
 22 advisement. There's no reason to
 23 discuss it further here now. We will
 24 take it under advisement.
 25 MR. POLLACK: I agree.

[4] (Pages 10 to 13)

[Page 14]

1 D. DeLarosa
 2 Q. I'm giving you back the documents that
 3 you had shown to me (handing). I just want to
 4 go over them real quickly.
 5 You had said that you had given me a
 6 recent check and an older check?
 7 A. Yes.
 8 This one, the one that I just gave you
 9 (indicating)?
 10 MR. ANDREWS: Why don't you mark
 11 them as exhibits? That way, there will
 12 be less confusion. That's my
 13 suggestion. I won't tell you what to
 14 do.
 15 (Whereupon, Copies of pay stubs
 16 and related document were marked as
 17 Defendant's Exhibits 71 through 73, for
 18 identification, as of this date.)
 19 Q. Now showing you what's been marked for
 20 identification as Defendant's Exhibit 71
 21 (handing).
 22 I'm just going to ask, is that a copy of
 23 one of the checks you provided me today?
 24 A. Yes. Yes, a copy.
 25 Q. Is this the most recent check you

[Page 15]

1 D. DeLarosa
 2 received from Late Night?
 3 A. I got more checks because this is from
 4 the month nine, so --
 5 MR. ANDREWS: I'm just objecting
 6 to the extent it's not a check. It's an
 7 earnings statement.
 8 Q. How often do you get paid?
 9 A. It's here. These are six dates that I
 10 work. It's a salary, \$79, so -- let's say, if
 11 I do more routes, they pay me double. It
 12 depends, you know.
 13 Q. Looking at Defendant's Exhibit 72, is
 14 that another copy of a pay stub you gave me
 15 today?
 16 A. Yes, but this is the new checks that
 17 they just came out because they don't withdraw
 18 taxes or anything, nothing. This is what you
 19 earn, and that's it.
 20 Q. Defendant's 72 is newer than 71?
 21 A. Yes. This is the latest one, latest
 22 checks that came out. I think they came out
 23 about a month ago.
 24 Q. Looking at Defendant's 73, is that
 25 connected, in any way, with Defendant's 71 or

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1 D. DeLarosa
 2 72?
 3 A. With this one (indicating).
 4 Q. With 72?
 5 A. Yeah, with the latest ones that came
 6 out. This is an old one (indicating).
 7 Q. You've been working as a driver for Late
 8 Night for about three years, correct?
 9 MR. ANDREWS: Objection.
 10 A. Exactly.
 11 Q. Have you had any other jobs while you've
 12 been working for Late Night?
 13 A. No. It's impossible because I got to
 14 get some sleep because I get home at 5:00 or
 15 6:00. I got to get some sleep so I could drive
 16 at night.
 17 Q. When you testified earlier about whether
 18 I was asking about being employed for side
 19 jobs, were there any other side jobs that
 20 you've worked in the last three years?
 21 MR. ANDREWS: Objection.
 22 A. No, I haven't had another job. I just
 23 worked for Fresh Diet.
 24 I used to work at McDonald's, and then
 25 my friend got me a job, this job, for Fresh

[Page 17]

1 D. DeLarosa
 2 Diet. Since then, I haven't had any other side
 3 jobs. That's the only job that I had.
 4 Q. Your last job before The Fresh Diet was
 5 McDonald's?
 6 A. Yes. I worked there for four years or
 7 more.
 8 Q. McDonald's?
 9 A. I think so, yeah.
 10 Q. Where was the McDonald's?
 11 A. On Broadway. The one on Broadway here.
 12 In Houston but lower than Houston on Broadway.
 13 Q. In Manhattan?
 14 A. Yes, Manhattan.
 15 Q. Are you a United States citizen?
 16 A. No, I'm not a citizen. I'm not a
 17 citizen.
 18 Q. Where were you born?
 19 A. Santo Domingo.
 20 Q. How long have you been in the United
 21 States?
 22 A. I got here in '92, then I went back
 23 there, and I came back here in 2001.
 24 Q. You've been here since 2001?
 25 A. Uh-huh. Yes.

[5] (Pages 14 to 17)

[Page 18]

1 D. DeLarosa
 2 MR. ANDREWS: Say yes.
 3 A. Yes.
 4 Q. Do you have a visa?
 5 A. I do have documents, yeah, documented.
 6 I want to become a citizen now. I'm
 7 going to wait for it.
 8 Q. Do you have any family here?
 9 A. Yes.
 10 Q. Who?
 11 A. My mom, cousins.
 12 Q. How old are you?
 13 A. Twenty-four.
 14 Q. What's your birth date?
 15 A. January 15, '89.
 16 Q. Who do you live with currently?
 17 A. With my wife and my baby.
 18 Q. You're married?
 19 A. We're not officially married. We're
 20 going to get married.
 21 Q. What's your wife's name or your
 22 girlfriend's name?
 23 A. Solanyi Infante.
 24 Q. Can you spell that?
 25 A. S-O-L-A-N-Y-I, I-N-F-A-N-T-E.

[Page 19]

1 D. DeLarosa
 2 Q. How long have you been together?
 3 A. About five years.
 4 Q. The whole time you've been working for
 5 Late Night, you've been with Solanyi?
 6 A. Yes, but she stays home with the baby.
 7 Q. How old is your baby?
 8 A. Two years old today.
 9 Q. Happy birthday.
 10 A. Thank you.
 11 Q. I'm going to show you a document that's
 12 been previously marked as Defendant's
 13 Exhibit 15 on September 20, 2013 (handing).
 14 I'm going to ask if you've ever seen
 15 that document before today.
 16 A. Yes, I have seen it.
 17 This is the one that I signed, right?
 18 Q. I don't know what you signed.
 19 Do you know if you've seen that before
 20 today?
 21 A. I've seen one that looks like it. Yeah.
 22 Yes. This one, yeah.
 23 Q. Can you read English?
 24 A. A little.
 25 Q. Can you read that whole document?

[Page 20]

1 D. DeLarosa
 2 A. A little.
 3 Q. Do you understand what that document is?
 4 A. I want to explain to you something.
 5 Look, I join in this lawsuit because -- well, I
 6 didn't have an -- I kind of -- it wasn't an
 7 issue with Syed. He wanted to fire me, called
 8 me once and said -- told me look, the company
 9 doesn't need your service anymore. That's why
 10 I joined this here even more. That was the
 11 reason. Yeah.
 12 Q. Do you know what that document is?
 13 A. This is the lawsuit, right?
 14 Q. Is that your understanding of what this
 15 document is?
 16 A. That's what I understand, yeah.
 17 MR. POLLACK: Let me mark this.
 18 (Whereupon, Consent to join was
 19 marked as Defendant's Exhibit 74, for
 20 identification, as of this date.)
 21 Q. Is there anything you want to testify to
 22 and explain to me?
 23 A. Yes.
 24 Q. What do you want to explain?
 25 A. I want to find out -- what hurts me most

[Page 21]

1 D. DeLarosa
 2 about all these -- the reasons of this is how
 3 I'm going to pay the taxes. When I pay
 4 taxes -- the company has to pay that money to
 5 me for the taxes because I've been working for
 6 the company, and I work for the company, so
 7 when the year ends, I have to pay 3,000 or
 8 4,000 from my own pocket. It's not right.
 9 That's why I'm involved in this. It's not easy
 10 for you to earn \$20,000 and then pay 4,000,
 11 3,000 in taxes. That's -- it's a pain. You
 12 get it? I got kids. I got to pay rent. It's
 13 not easy.
 14 Q. Do you understand the difference between
 15 an independent contractor and an employee?
 16 MR. ANDREWS: Objection.
 17 A. I kind of get it, but the reason is that
 18 if you work for a company, it's better for them
 19 to withdraw the taxes for you.
 20 Q. Why is it better?
 21 A. Because you might get a little bit money
 22 back when you do your taxes. I mean, it --
 23 when the checks accumulate --
 24 MR. ANDREWS: Make sure you give
 25 him time to translate.

[6] (Pages 18 to 21)

[Page 22]

1 D. DeLarosa
 2 A. When the checks accumulate -- let's say,
 3 January until December. I've noticed that I
 4 have to pay more money for that check involved
 5 there. Do you understand? If they withdraw
 6 the taxes, you pay less taxes because that
 7 check is accumulating. I mean, do you
 8 understand? I don't know.
 9 Q. I understand.
 10 A. But I don't understand.
 11 Q. Do you pay taxes?
 12 A. I do pay taxes immediately because I
 13 have my baby as a dependent, child as a
 14 dependent, so I file like that.
 15 So, let's say, the other drivers have to
 16 pay from their pockets, it's not easy. The
 17 drivers that owe taxes --
 18 Q. Do you know what the claims are in this
 19 lawsuit?
 20 A. The only thing that I'm claiming here,
 21 the tax issues.
 22 Q. Do you prepare your own tax returns?
 23 A. No. I bring it to the agency.
 24 Q. What agency do you bring them to?
 25 A. For the Bronx. I don't know. I don't

[Page 23]

1 D. DeLarosa
 2 know their names.
 3 Q. Have you used the same agency to file
 4 all the taxes?
 5 A. No. I file my taxes on Clinton, on
 6 Clinton.
 7 Q. Clinton Avenue?
 8 A. In Manhattan.
 9 Q. Clinton, the street?
 10 A. Street, yeah. It's between Clinton and
 11 Houston.
 12 Q. What year did you file taxes with that
 13 agency?
 14 A. Ever since I've been working, I filed it
 15 there, but the last year, I went to the Bronx.
 16 Q. Do you get a copy of the tax return
 17 after you file it?
 18 A. Yes. I could provide you with it.
 19 MR. POLLACK: I'm going to make
 20 a request for those for each year that
 21 you were working with Late Night or The
 22 Fresh Diet.
 23 THE WITNESS: Okay.
 24 Q. Do you understand that if you were to be
 25 issued a check as an employee, taxes may come

[Page 24]

1 D. DeLarosa
 2 out of the amount that you are receiving?
 3 A. What do you mean? Can you repeat that?
 4 Can you repeat that, please?
 5 Q. Yes.
 6 You say that your issue in this lawsuit
 7 is the taxes.
 8 A. Yeah.
 9 Q. Is it only the taxes?
 10 A. Taxes and the salary that you get.
 11 Q. It's the amount of money --
 12 A. Yeah.
 13 Q. -- and the taxes?
 14 A. Exactly.
 15 Q. Is that it?
 16 A. That's the issue that I have.
 17 Q. You pay taxes on the money you receive,
 18 right?
 19 A. Exactly. They withdrew it immediately.
 20 Q. Who withdraws it?
 21 A. They deduct the taxes immediately, and
 22 they send me the -- my share.
 23 Q. Looking at Defendant's 71, do you see
 24 that it says gross pay is \$474?
 25 Do you see that?

[Page 25]

1 D. DeLarosa
 2 A. Yes.
 3 Q. Net pay is \$474.
 4 Do you see that?
 5 A. Yes.
 6 Q. Do you understand that no taxes are
 7 taken out of your pay?
 8 MR. ANDREWS: Objection.
 9 A. Yes.
 10 Q. You understand that?
 11 MR. ANDREWS: Objection.
 12 A. Yes. Yes.
 13 Q. Same as 72.
 14 MR. ANDREWS: Objection.
 15 Q. Do you see that "FICA," "Medicare,"
 16 "Federal," and "Total Voluntarily Deduction"
 17 all have zero?
 18 A. Yes. Yes.
 19 Q. So the gross pay is the same as the net
 20 pay?
 21 A. Yes. Yes.
 22 Q. You see that, right?
 23 A. Yes.
 24 Q. Do you understand that if you were an
 25 employee, your net pay would be less than your

[7] (Pages 22 to 25)

[Page 26]

1 D. DeLarosa
 2 gross pay?
 3 MR. ANDREWS: Objection.
 4 A. Yes.
 5 Q. You understand that?
 6 A. I do understand, yes.
 7 MR. ANDREWS: Objection.
 8 Q. I'm now going to show you a document
 9 that's been marked as Defendant's Exhibit 74
 10 (handing).
 11 I'm going to ask if you've ever seen a
 12 document like this before today.
 13 A. Yes. This is the one that I signed.
 14 Q. Do you have a copy of the signed one?
 15 A. I don't think so. I believe so, but --
 16 Q. Do you know if you ever signed any type
 17 of agreement with Late Night before you started
 18 working?
 19 A. I filled out a -- the first time that I
 20 worked there, I filled out some documents that
 21 they provided me with in order to start my job.
 22 Yeah. And I also filled out some paperwork
 23 when the accident happened.
 24 Q. Looking at the document that's been
 25 marked as Defendant's 18 on September 20th,

[Page 27]

1 D. DeLarosa
 2 have you ever seen this document before today
 3 (handing)?
 4 MR. ANDREWS: Objection.
 5 A. I don't remember. This was the
 6 contract, right?
 7 MR. ANDREWS: Objection.
 8 Q. Do you ever remember signing something
 9 like this?
 10 A. I don't think I've signed something like
 11 that. I don't remember if I signed something
 12 like this. I don't remember. Maybe, but I
 13 don't know. I don't remember. Maybe it was
 14 the first time.
 15 MR. ANDREWS: Remember, Yale
 16 asks you questions. You don't ask him
 17 questions.
 18 MR. POLLACK: Let's mark this.
 19 (Whereupon, Notice of EBT was
 20 marked as Defendant's Exhibit 75, for
 21 identification, as of this date.)
 22 (Whereupon, Three ID cards were
 23 marked as Defendant's Exhibit 76, for
 24 identification, as of this date.)
 25 Q. I'm now showing you a document marked as

[Page 28]

1 D. DeLarosa
 2 Defendant's Exhibit 75 (handing).
 3 I'm going to ask if you've ever seen
 4 this document before today.
 5 A. This -- wasn't this -- didn't this come
 6 with another document, the other one?
 7 MR. ANDREWS: Remember, answer
 8 the questions. Don't ask questions.
 9 A. Yeah. I think I've seen this before.
 10 Q. You think so?
 11 A. Are these together?
 12 Q. Are you referring to Defendant's 74 and
 13 75?
 14 A. Yes. Aren't they joined as one?
 15 Q. Do you remember ever seeing this
 16 document?
 17 Specifically, do you ever remember
 18 seeing Defendant's Exhibit 75?
 19 A. I don't think I've seen this one, no.
 20 I've only seen the other one that's shown.
 21 Q. 74?
 22 A. This one, yes, but I haven't seen this
 23 one (indicating).
 24 Q. I'm going to show you what's been marked
 25 Defendant's 76 (handing).

[Page 29]

1 D. DeLarosa
 2 I'm going to ask if you recognize the
 3 copies of the ID cards on this document.
 4 A. Wasn't it the company that took these
 5 copies?
 6 MR. ANDREWS: Again, don't ask
 7 questions. Answer questions.
 8 A. Yes. Yes. Yes.
 9 Q. It's marked as FD000141.
 10 Does this have a copy of your resident
 11 card?
 12 A. Yes.
 13 Q. Is that a copy of your resident card on
 14 the top left?
 15 A. Yes, this is a copy.
 16 Q. Is that a copy of your driver's license
 17 on the top right?
 18 A. Yeah, it's a copy.
 19 Q. Do you have a new driver's license?
 20 A. Yes. I got an F, the F one right now.
 21 MR. ANDREWS: He just had it
 22 out. Do you want it?
 23 MR. POLLACK: Yes.
 24 A. Because I want to be a taxi driver later
 25 on, not now. E. E (handing).

[8] (Pages 26 to 29)

[Page 30]

1 D. DeLarosa
 2 Q. Is that a copy of your Social Security
 3 card?
 4 A. Yes.
 5 Q. If you can, wait until I finish. You
 6 probably know the answer, but just wait until I
 7 finish, and then answer.
 8 What do you do as a driver for Late
 9 Night?
 10 MR. ANDREWS: Objection.
 11 A. I arrive to the company. I take the
 12 train. When I get to the company, I check the
 13 manifest. First, I speak to Owen, Owen or
 14 Syed. They tell me which is going to be my
 15 route to work on because I don't have a route.
 16 Once again, I don't have a route, so I do the
 17 route that they assigned me to.
 18 Q. I want to go back, and I just want to go
 19 back to when you started about three years ago.
 20 Okay?
 21 A. Yeah.
 22 Q. Where were you living at that time?
 23 A. Same address.
 24 Q. What were you doing for Late Night about
 25 three years ago when you started working?

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1 D. DeLarosa
 2 MR. ANDREWS: Objection.
 3 Q. Explain the process then when you
 4 started working.
 5 A. When I started there, I started with
 6 Zapata as an assistant because he didn't know
 7 the area, how to move around the area. That's
 8 how I started, as an assistant. Then I was
 9 assigned to be a driver.
 10 Q. You said you heard about it from a
 11 friend when you were working at McDonald's?
 12 A. Yes, a friend of mine.
 13 Q. Do you know the friend's name?
 14 A. Alexander Zapata.
 15 Q. Was Alexander a driver, to the best of
 16 your knowledge, at that time?
 17 A. Well, no. He just -- I mean, he just
 18 had been working there for a month, so -- and
 19 he needed somebody to help him.
 20 Q. You were helping Alexander in the
 21 beginning?
 22 A. Yes. Yes.
 23 Q. Where would you meet Alexander to help
 24 him do his work?
 25 MR. ANDREWS: Objection.

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1 D. DeLarosa
 2 A. We would meet in the train, the train,
 3 but I new Alexander since we were little, since
 4 we were little.
 5 Q. Did you go to any facility of The Fresh
 6 Diet when you started three years ago?
 7 A. Facility?
 8 Q. As a driver, what do you do before you
 9 start your route?
 10 A. I have to grab a bag, take the bag and
 11 put it in the truck, and after that, I begin my
 12 route.
 13 Q. Where do you get the bag from?
 14 A. At a freezer. They have a huge freezer
 15 there. It's like a shop or something.
 16 Q. This is at a building?
 17 A. Yes.
 18 Q. Where is this building located?
 19 A. 588 Boston Street.
 20 Q. Baltic?
 21 A. Baltic Street in Brooklyn, but they used
 22 to have another facility. I don't remember the
 23 address.
 24 Q. Siegel?
 25 A. Siegel, yes. That's where I -- that's

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1 D. DeLarosa
 2 where we started, began, and after that, I
 3 moved -- we moved to this other one, to
 4 Atlantic and 4th Avenue.
 5 Q. When you started, the facility was on
 6 Siegel Street in Brooklyn?
 7 A. On Siegel.
 8 Q. When you would go with Alexander in the
 9 beginning, did you both travel to the Siegel
 10 Street location?
 11 A. Yes. We took the train.
 12 Q. Have your duties been the same since the
 13 time you started until today?
 14 MR. ANDREWS: Objection.
 15 A. Yeah, it's always been the same.
 16 Q. Can you explain what that is again?
 17 A. What's the process?
 18 Q. Yes.
 19 A. Okay. I arrive at the company, I speak
 20 to Owen or Syed, and then they assign me the
 21 route that I have to do, and I go to the
 22 freezer, I take the bag, I put it inside the
 23 truck, and then I do my route.
 24 Q. Have you had the same route since you
 25 started?

[9] (Pages 30 to 33)

[Page 34]

1 D. DeLarosa
 2 MR. ANDREWS: Objection.
 3 A. Different routes. Different routes.
 4 Q. How many different routes have you
 5 driven?
 6 A. I've done all of them, all the areas
 7 that they have, but not the B route. I've gone
 8 to D.C., Boston, Philly, but he calls me
 9 beforehand like at 2:00 or at 1:00 in the
 10 afternoon, depends on the time.
 11 Q. What time would you arrive at the
 12 company?
 13 A. What time you say?
 14 Q. What time would you get there?
 15 A. Okay. If I have to go to Boston, I have
 16 to do Boston and Connecticut on the return, so
 17 I leave at 2:00, and I'll get there at 3:00 or
 18 4:00, but they pay you a salary at that moment.
 19 It's a salary. Heading to Boston is 80 or \$85,
 20 and your return trip, you do Connecticut, and
 21 that's \$75 because it's a double route.
 22 Q. Do you ever use your own car to perform
 23 the deliveries?
 24 A. Once I used it for six months, and it
 25 just -- and the transmission got damaged.

[Page 35]

1 D. DeLarosa
 2 Q. For six months, you were using a car,
 3 your own car?
 4 A. Then I thought it's not worth it.
 5 Q. What kind of car do you use to perform
 6 the routes?
 7 A. Honda CRV 2001.
 8 Q. Do you ever perform deliveries in the
 9 tristate area?
 10 A. Like nearby?
 11 Q. Like in Manhattan.
 12 A. I've done all the routes. I've been to
 13 Connecticut, Long Island, Staten Island,
 14 Boston, D.C. I've done every single route in
 15 all this area. I've done it, the entire New
 16 York.
 17 Q. Are there any routes that are just
 18 Manhattan?
 19 A. What do you mean?
 20 Q. Are there any routes that are solely in
 21 Manhattan?
 22 A. For Manhattan, yes. You want to know?
 23 Q. No. That's okay.
 24 A. Because they're assigned by letters.
 25 Q. Are there others that are just for --

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1 D. DeLarosa
 2 A. I can show you which ones.
 3 Q. -- Connecticut?
 4 A. Connecticut, Staten Island, Jersey,
 5 and -- you got Jersey. You got Long Island. I
 6 know all of them.
 7 Q. Are you paid differently if you do a
 8 route in Manhattan versus Connecticut?
 9 A. The same, \$79.
 10 Q. 79 --
 11 A. Doesn't matter the time that you
 12 finished.
 13 Q. From the time you started three years
 14 ago until today, you've been getting \$79 a
 15 night that you performed work?
 16 A. When I started as a helper, I was paid
 17 \$8. Then I got a raise and -- got a raise, and
 18 it was \$10, and I haven't gotten a raise since
 19 then. \$79.
 20 Q. When you say \$8 when you started as a
 21 helper, \$8 for what, an hour?
 22 A. Per hour.
 23 Q. Now it's \$10 per hour?
 24 MR. ANDREWS: Objection.
 25 A. Yes. Yes.

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1 D. DeLarosa
 2 Q. What is your rate right now?
 3 A. 474 a week. That's \$79.
 4 Q. What is it per hour?
 5 MR. ANDREWS: Objection.
 6 A. It's a salary that I get. I don't punch
 7 card or anything. I don't punch in or
 8 anything. It's just a salary that I get.
 9 Q. Is it your testimony that that comes out
 10 to about \$79 a night?
 11 A. Uh-huh. Yeah.
 12 MR. ANDREWS: Say yes.
 13 A. Yes. Yes.
 14 Q. I just want to focus on when you do
 15 deliveries in the tristate area. No Boston,
 16 just the New York area.
 17 Okay?
 18 A. Okay.
 19 Q. When you were going to do deliveries in
 20 the New York area, what time would you arrive
 21 at the company?
 22 A. Well, let's say -- as I said, if Owen
 23 calls me, that's when I start. I mean, I don't
 24 know when I start.
 25 Q. What would the earliest Owen would tell

[10] (Pages 34 to 37)

[Page 38]

1 D. DeLarosa
 2 you to come in be?
 3 A. 2:00, 5:00.
 4 Q. What about the latest?
 5 A. 10:00 or 11:00.
 6 Q. Does it change every day?
 7 MR. ANDREWS: Objection.
 8 A. Yes. He calls me, sends me a text, lets
 9 me know.
 10 Q. What time is the earliest you would ever
 11 be finished with your deliveries?
 12 Again, focusing on the New York area.
 13 A. Like just Manhattan?
 14 Q. Yes.
 15 A. Manhattan, like 2:00 or 3:00 in the
 16 morning.
 17 Q. 2:00 a.m.?
 18 A. In the morning. Depends on how many
 19 bags I get, so --
 20 Q. What's the least amount of bags you
 21 would deliver in a night?
 22 A. I think it was fifteen.
 23 Q. What about the most?
 24 A. Fifty-five.
 25 Q. How many days of the week do you perform

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1 D. DeLarosa
 2 deliveries?
 3 A. Six days.
 4 Q. Six nights, correct?
 5 A. Yes.
 6 Q. What night don't you work?
 7 A. Saturday because Fridays we hand over a
 8 double -- double packaging, so -- for
 9 Saturdays -- we do double for Saturday and
 10 Sunday, double delivery.
 11 Q. You don't work Saturday night into
 12 Sunday morning?
 13 A. That's my only night off, Saturdays.
 14 Q. You earlier testified that there are two
 15 vehicles right now for the company.
 16 MR. ANDREWS: Objection.
 17 A. Two vehicles. One of them is in the
 18 shop right now.
 19 Q. Is there only one vehicle?
 20 A. They have three, but only two -- only
 21 two are currently available. That's why I have
 22 to wait. I have to wait.
 23 Q. Do you know how many drivers besides you
 24 perform deliveries in the New York area for The
 25 Fresh Diet?

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1 D. DeLarosa
 2 A. Just Manhattan?
 3 Q. The tristate area.
 4 MR. ANDREWS: Does that include
 5 Connecticut?
 6 MR. POLLACK: Yes.
 7 Q. Connecticut, New Jersey, New York.
 8 MR. ANDREWS: Long Island.
 9 How many drivers?
 10 A. Lots of them. About ten, fifteen. It
 11 has to be more. The thing is some of the
 12 drivers do double-duty.
 13 Q. When you say "double-duty," what do you
 14 mean?
 15 A. Double route.
 16 Q. Does that mean two routes in the same
 17 night?
 18 A. Exactly.
 19 Q. When you arrive at the facility, are the
 20 bags already packed?
 21 A. Sometimes they're not. Sometimes the
 22 food hasn't arrived yet, so you got to wait.
 23 Q. Are there other people who pack the bags
 24 for you?
 25 A. Sometimes, yeah, but sometimes you have

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1 D. DeLarosa
 2 to pack them yourself. It depends, you know.
 3 Q. What do Bobby and Drew do?
 4 A. What do you mean? As soon as we get to
 5 the company?
 6 Q. What are their duties, to the extent
 7 that you know?
 8 A. They're drivers.
 9 Q. Bobby and Drew?
 10 A. Bobby covers Long Island, and Drew
 11 covers Manhattan.
 12 Q. Their shift is from 5:00 p.m. to
 13 10:00 p.m.?
 14 MR. ANDREWS: Objection.
 15 A. Yes. It depends, you know.
 16 MR. ANDREWS: Objection.
 17 Q. Is it your understanding that they use
 18 the cars for the company to perform their
 19 deliveries?
 20 A. They use the cars for the company, and
 21 we wait until they're done, and we do our own
 22 route after that.
 23 Q. Do you know any drivers who use their
 24 own car to perform deliveries?
 25 A. Yes, lots of them.

[11] (Pages 38 to 41)

[Page 42]

1 D. DeLarosa
 2 Q. Are you and Alex the only ones that use
 3 the company car?
 4 MR. ANDREWS: Objection.
 5 A. Drew and Alex and myself. We use the
 6 vehicles.
 7 Q. Everyone else, to the extent you know,
 8 uses their own car?
 9 A. Their car, exactly.
 10 Q. When you were going to perform a route
 11 on any given night, how would you know where to
 12 go?
 13 A. When I do a route?
 14 Q. Yes.
 15 A. I put in the computer, and I check my
 16 route to see what's the best one for me.
 17 Q. What do you do when you see what's the
 18 best?
 19 A. I put one, two, three in the manifest to
 20 do the easiest route because if I do it their
 21 way, it could take longer.
 22 Q. You choose the order in which the
 23 deliveries are going to be made?
 24 MR. ANDREWS: Objection.
 25 A. Yes, I do.

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1 D. DeLarosa
 2 They give -- they hand me the manifest,
 3 right. Let's say, we got thirty stops along
 4 the way, and, let's say, that's 200 miles. I
 5 do it in a way that I know how to do it so it's
 6 easier for me to cover.
 7 Q. When do you make the decision as to how
 8 the meals are going to be delivered?
 9 MR. ANDREWS: Objection.
 10 A. Well, if they give me the manifest, I
 11 see everything, the food and everything, and I
 12 leave. Yeah.
 13 Q. Do you talk to anyone and say I'm going
 14 to deliver them in a certain way?
 15 A. Sometimes with Owen, but I know my
 16 route. I can -- I cover it any way I want.
 17 There's so many different ways you can cover
 18 it, so --
 19 Q. Do you have to check with Owen or Syed
 20 if you are going to deliver it a different way
 21 than was on the manifest?
 22 MR. ANDREWS: Objection.
 23 A. No. I do it as I -- the way that I can.
 24 As long as everything's delivered, it's no
 25 problem.

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1 D. DeLarosa
 2 Q. Do you take any breaks during the time
 3 you perform deliveries?
 4 A. Sometimes to drink a coffee, and I do my
 5 work. I don't take breaks. I just want to get
 6 it done.
 7 Q. If you have to get a coffee or go to the
 8 bathroom, you'll take a break?
 9 MR. ANDREWS: Objection.
 10 A. Yes.
 11 Q. Do you call Owen or Syed --
 12 A. No.
 13 Q. Just let me finish.
 14 Do you call Owen or Syed and say I'm
 15 going to take a break right now?
 16 MR. ANDREWS: Objection.
 17 A. No.
 18 Q. When you're done with performing your
 19 deliveries, what do you do?
 20 A. I head back to the company, take the
 21 bags.
 22 Q. Do you call Owen or Syed after you leave
 23 the last delivery?
 24 A. No.
 25 Q. What time do you finish your last

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1 D. DeLarosa
 2 delivery?
 3 MR. ANDREWS: Objection.
 4 A. It depends if there's traffic, you know.
 5 Between 5:00 and 6:00. Depends. Let's say, if
 6 I leave at 10:00 or at 9:00, I'm done by -- at
 7 6:00. It depends, but it's hard when you
 8 return because there's so much traffic at that
 9 time. Everybody's going to work.
 10 Q. If you were just delivering in
 11 Manhattan, you could be done earlier than 5:00,
 12 correct?
 13 MR. ANDREWS: Objection.
 14 A. Yeah, because -- sorry.
 15 Q. Go ahead.
 16 A. Because my job used to be just
 17 Manhattan. Now they send me anywhere they
 18 want.
 19 Q. How long --
 20 A. It's always been like that, but my job
 21 should be just for Manhattan like Drew and
 22 Zapata do. Not me. I'm all over.
 23 MR. POLLACK: Let's take a
 24 five-minute break.
 25 (Whereupon, a recess was taken)

[12] (Pages 42 to 45)

[Page 46]

1 D. DeLarosa
 2 at this time.)
 3 Q. Was there a time that you only worked
 4 Manhattan routes?
 5 A. Yes.
 6 Q. When was that from?
 7 A. I always did Manhattan, but -- let's
 8 say, on Fridays, they'd take -- they usually
 9 take their days off, so I cover it.
 10 Q. Is that since the time you started?
 11 A. Almost, but I try to be all over, so --
 12 it's -- always sending me all over. As I said,
 13 they let me know.
 14 Q. When you were working in Manhattan, was
 15 there a particular route that you covered?
 16 MR. ANDREWS: Objection.
 17 A. I always covered R2, which is Manhattan
 18 before. Now, I only cover H, H and the U
 19 route.
 20 Q. Where is the R2 route? What area does
 21 it cover?
 22 A. West Side 72nd Street.
 23 It's a small route, so it's about
 24 fifteen stops or ten stops that's on the West
 25 Side because there are three routes. This

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1 D. DeLarosa
 2 area, it's the P route.
 3 Q. Being --
 4 A. This area.
 5 Q. -- around the building?
 6 A. Yes, this area. There are like fifty
 7 stops around here.
 8 MR. ANDREWS: You mean Lower
 9 Manhattan?
 10 THE WITNESS: Yeah.
 11 A. I'll explain to you all the routes.
 12 Q. I don't need an explanation on the
 13 routes.
 14 There's a route called R2, correct?
 15 A. Yes. It's joined with E, ES. It's a
 16 total of ninety.
 17 Q. Ninety stops?
 18 A. Yes, but they are divided separate to
 19 different routes. So many of them.
 20 Q. Was there a time that you worked mainly
 21 on the R2 route?
 22 A. Yes. Yes. I used to cover that one,
 23 and then I would do H because H is on the East
 24 Side.
 25 Q. In the beginning about three years ago,

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1 D. DeLarosa
 2 were you doing the R2 route?
 3 A. No, F.
 4 Q. F route?
 5 A. F is Jersey.
 6 Q. We're going to break this down now.
 7 When you started, you were doing the F
 8 route, correct?
 9 A. First, U, and then I was switched with
 10 Zapata to F. At that time, we would work
 11 together. First, U, and then they sent us out
 12 to Jersey doing the F route.
 13 Q. Again, now we'll take it back one more
 14 step.
 15 When you started, you were working the U
 16 route, correct?
 17 A. Yes.
 18 Q. Where is the U route?
 19 A. The Lower East Side of Manhattan
 20 (English).
 21 Q. How many stops is the U route?
 22 MR. ANDREWS: Objection.
 23 A. Sixty or sometimes fifty.
 24 Q. When you started, you were doing the U
 25 route with Zapata?

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1 D. DeLarosa
 2 A. Yes.
 3 Q. Do you know why he needed your help?
 4 A. He didn't know the area very well.
 5 Q. Did you ever separately make deliveries
 6 on the same night?
 7 A. No. We were always together.
 8 Q. Do you know how he was being paid?
 9 A. They paid us by hour at that time. Then
 10 they switched us to a salary.
 11 Q. Do you know how much Alex was being paid
 12 hourly?
 13 A. \$10.
 14 Q. You were receiving \$8?
 15 A. Yes, exactly, per hour.
 16 Q. When did it switch to salary?
 17 A. A year ago already.
 18 Q. When you were doing the U route with
 19 Alex, what time would you get to Siegel Street?
 20 A. We would be -- start at -- at that
 21 time -- oh, I don't remember. We would work
 22 like a ten-hour shift, ten, eight, or
 23 nine hours.
 24 Q. Somewhere between eight to ten hours?
 25 A. Yeah.

[13] (Pages 46 to 49)

[Page 50]

1 D. DeLarosa
 2 Q. You and Alex both went to the facility
 3 together?
 4 A. Uh-huh. Yes.
 5 Q. Were you going into the same car to --
 6 A. At that time, we don't have a car. We
 7 took the train.
 8 Q. What would you do?
 9 You would take the bags from the
 10 freezer?
 11 A. Yes.
 12 Q. Then you'd bring them onto the subway?
 13 MR. ANDREWS: Objection.
 14 A. No. No. We would take the train
 15 together, and we would get to the company. We
 16 would take the vehicle, and we would take the
 17 manifest, and we'll take the food, put it in
 18 the truck, and then we would leave.
 19 Q. When you were done performing deliveries
 20 with Alex doing the U route, would you return
 21 to Siegel Street at the end of the night?
 22 A. Yes.
 23 Q. When did you switch to the F route?
 24 A. Don't remember when the switch was.
 25 It's a while ago.

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1 D. DeLarosa
 2 Q. Do you remember if it was less than a
 3 year after you started?
 4 A. I think it was eight months that we only
 5 covered U, and then they switched us to F to
 6 Jersey.
 7 Q. Was the company's facility still at
 8 Siegel Street at the time that you switched
 9 from U to F?
 10 A. Yes. It was always there. Yeah.
 11 Q. It was still at Siegel Street?
 12 A. We were still at Siegel, yes.
 13 Q. Was the process the same when you were
 14 doing the F route as when you were doing the U
 15 route?
 16 A. Almost the same, yeah. Basically the
 17 same.
 18 Q. Anything different that you could
 19 explain?
 20 A. About the same. Maybe it was an hour
 21 longer or two because I was in New Jersey. You
 22 have to -- it was further away, so --
 23 Q. You would still arrive at the facility,
 24 pack the bags, perform the deliveries, return?
 25 A. Uh-huh. Yes.

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1 D. DeLarosa
 2 Q. Yes?
 3 A. Yes.
 4 Q. How long did you do the F route?
 5 A. Don't remember.
 6 Q. There came a time when you got a
 7 separate route from Alex?
 8 A. Yes, when we were at F. Like five or
 9 four months after, I was switched, or more.
 10 I'm not sure. Don't remember.
 11 Q. You had your own route at that time
 12 then?
 13 A. Yes. As I said, I've never had a route.
 14 Q. Did Alex keep the F route when you were
 15 switched?
 16 A. Yes.
 17 Q. Were you given the R2 route?
 18 A. It wasn't given to me. It's just that
 19 they gave me Manhattan. Whoever had the night
 20 off, I would take it, but for two or three
 21 months, I was just doing R2 and H.
 22 Q. When you did the R2 route, how long
 23 would it take you to perform the deliveries?
 24 A. For H and R2?
 25 Q. Just for R2.

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1 D. DeLarosa
 2 A. Three hours or two.
 3 Q. Two to three hours?
 4 A. Three hours.
 5 Q. What about the H route?
 6 A. H? Like four hours maybe.
 7 Q. Were you still being paid \$8 an hour
 8 when you performed R2?
 9 A. \$79.
 10 MR. ANDREWS: That's 79 in a
 11 day?
 12 THE WITNESS: Yeah. An hour, I
 13 wish (English).
 14 Q. If you did the H route, was it sill 79?
 15 A. Same. Same thing for both routes. Same
 16 thing. Same pay for both.
 17 Q. Did you ever have any other people work
 18 with you performing deliveries?
 19 A. I have a friend that comes along with
 20 me.
 21 Q. What's his name?
 22 A. Ambiori Paez.
 23 Q. Do you know the spelling?
 24 A. A-M-B-I-O-R-I, and last name is,
 25 P-A-E-Z.

[14] (Pages 50 to 53)

[Page 54]

1 D. DeLarosa
 2 Q. Do you pay Ambiori?
 3 A. I give him something to come along with
 4 me. Sometimes I do.
 5 Q. Does he come with you to the facility to
 6 pick up the bags?
 7 A. No. Yes, sometimes he goes with me, or
 8 we meet.
 9 Q. Do you know if he's ever met Syed?
 10 MR. ANDREWS: Objection.
 11 Objection.
 12 A. He's seen Syed. He's seen him and Owen.
 13 Q. And Owen?
 14 A. Yes, because he sometimes rides along
 15 with me, so -- or he waits for me over there,
 16 so --
 17 Q. Does he have his own car?
 18 A. No. He takes the train.
 19 Q. How frequently would he come with you on
 20 the routes?
 21 A. When I do long routes, that's the far
 22 away, I like to be with somebody because it's a
 23 risk that I could fall asleep, so he keeps me
 24 awake.
 25 Q. Have Syed or Owen ever told you not to

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1 D. DeLarosa
 2 bring him with you?
 3 A. No, they've never told me that.
 4 Q. Does he ever help you deliver the bags
 5 when he comes along with you?
 6 MR. ANDREWS: Objection.
 7 A. Yes, he sometimes helps me.
 8 (Whereupon, 2011 1099 form was
 9 marked as Defendant's Exhibit 77, for
 10 identification, as of this date.)
 11 (Whereupon, 2012 1099 form was
 12 marked as Defendant's Exhibit 78, for
 13 identification, as of this date.)
 14 Q. Now I'm going to show you a document
 15 that's been marked for identification as
 16 Defendant's Exhibit 77 (handing).
 17 I'm going to ask if you've ever seen
 18 that document before today.
 19 A. Isn't this for your income tax or
 20 something like that?
 21 Q. I just need to know if you remember
 22 seeing that document before today.
 23 MR. ANDREWS: Remember, just
 24 answer the question.
 25 A. I believe so. I don't believe so.

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1 D. DeLarosa
 2 Q. Do you know what that document is?
 3 A. Isn't this for your income taxes?
 4 Q. Do you know?
 5 Do you know what it is?
 6 A. Yes, I know what it is.
 7 Q. What do you think that that document is?
 8 A. This is to do your income taxes.
 9 Q. Do you know if you gave this to the
 10 agency you used to file your tax returns?
 11 A. Yes, I believe so.
 12 Q. I'm now going to show you a document
 13 that's been marked for identification as
 14 Defendant's 78 (handing).
 15 I'm going to ask if you've ever seen
 16 that document before today.
 17 A. Yes, I think so.
 18 Q. What do you understand this document to
 19 be?
 20 A. This is for income taxes, right?
 21 Q. Is that what your understanding is?
 22 A. Yes.
 23 MR. ANDREWS: Again, don't ask
 24 him questions. Just give the answers.
 25 A. Yes.

[Page 57]

1 D. DeLarosa
 2 Q. Do you believe that you gave this
 3 document to the agency to do your tax return?
 4 A. Yes.
 5 Q. When you file tax returns, do you do it
 6 once a year or more than once?
 7 A. Once every year.
 8 Q. Do you know what month you go to the
 9 agency?
 10 A. I got all that proof at home.
 11 Q. Do you know if certain expenses were
 12 deducted on your tax return?
 13 A. I believe so. I don't know.
 14 Q. Did you give copies of your tax returns
 15 to your attorney?
 16 A. No, I haven't.
 17 Q. Do you know the name Judah Schloss?
 18 THE INTERPRETER: I'm sorry?
 19 Q. Do you know the name Judah Schloss?
 20 A. Uh-uh. No.
 21 Q. Do you know the name Zaimi Duchman?
 22 A. Nope.
 23 Q. Did you ever keep records of the
 24 deliveries that you performed for Late Night?
 25 A. What records, like a manifest or

[15] (Pages 54 to 57)

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1 D. DeLarosa
2 something like that?
3 Q. Do you have copies of the manifests?
4 A. I think I do, but I'm not sure because I
5 always leave them there.
6 Q. You leave them at the facility?
7 A. Yeah, at the facility because they have
8 to write down bags that I picked up and took.
9 Q. How frequently do you communicate with
10 Owen or Syed?
11 A. Only -- only communicate with Owen,
12 that's it.
13 Q. Do you do that with your cell phone?
14 A. Yes, cell phone.
15 Q. Have you had the same cell phone for the
16 last three years?
17 A. No. I had three different cell phones,
18 three numbers.
19 Q. Three numbers?
20 A. Yeah.
21 Q. Do you have copies of any text messages
22 that you had with Owen?
23 A. I think I have them, yes.
24 MR. POLLACK: I'm going to ask
25 for copies of those text messages.

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1 D. DeLarosa
2 A. I think I have them here. Let me see.
3 I don't have many of them.
4 Q. We don't have to go through this today.
5 Do you text with Owen?
6 A. Yes.
7 Q. What would you text about with Owen?
8 A. What time the route starts, what route
9 am I going to cover.
10 Q. That's information you know before you
11 arrive at the facility?
12 A. Exactly.
13 If there's no vehicles, which one are we
14 going to rent.
15 Q. Do you communicate with him at all when
16 you're actually performing the deliveries?
17 A. If I'm lost, if I can't find the house
18 that I'm supposed to be delivering, I will give
19 him a call.
20 Q. Does that happen a lot?
21 A. Happens a lot.
22 Q. Other than saying that you're lost or
23 you can't find a location, do you communicate
24 with him during the time you're performing
25 deliveries?

[Page 60]

1 D. DeLarosa
2 MR. ANDREWS: Objection.
3 A. Yes.
4 Q. What other things would you communicate
5 about?
6 A. Can't find the address, I have nowhere
7 to put it, or I do a search on Google Maps.
8 Q. How did you first learn about this
9 lawsuit?
10 A. I found out because -- through Fernando.
11 What's the name of this other kid? The Chinese
12 guy. That's what I call him, Chinese guy.
13 Q. Is it Kenneth Chow?
14 A. Ken, yeah. Yes, good man.
15 Q. What did they tell you about the
16 lawsuit?
17 A. They told me that -- about the taxation,
18 the way that they treat you, all of that stuff.
19 Q. Do you know if Mr. Hernandez was paid
20 hourly?
21 MR. ANDREWS: Objection.
22 A. By bag. Same thing with Chinese guy.
23 MR. ANDREWS: Objection.
24 MR. POLLACK: There's no
25 question.

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1 D. DeLarosa
2 MR. ANDREWS: The objection is
3 to the question that was asked before.
4 Q. It's your understanding they're paid by
5 bag?
6 A. Per bag, yeah.
7 Q. Do you know if anybody else is paid
8 hourly?
9 A. Drew, Zapata. Not hourly but a salary.
10 Q. Fair enough.
11 At some point, you were paid hourly,
12 correct?
13 A. Yes.
14 Q. When did that change?
15 A. I think it was a year or two ago. I'm
16 not too sure. Or a year and a half. I don't
17 remember.
18 Q. You were paid hourly for about a year
19 and a half to two years, approximately?
20 A. Something like that.
21 Q. Do you know if anybody else was paid
22 hourly during that time?
23 A. Drew, Zapata. Just us three. Just us
24 three that were paid per hour, us three.
25 Q. Do you know how the other drivers were

[16] (Pages 58 to 61)

[Page 62]

1 D. DeLarosa
 2 paid?
 3 A. Per mile and per bag.
 4 Q. Were Alex and Drew still working at the
 5 company when you were switched from hourly to
 6 salary?
 7 A. Yes. We had the same -- we were there
 8 for the same time. I think Drew has been
 9 working there two months longer than I have or
 10 three. I'm not sure, but we were there about
 11 the same time.
 12 Q. Do you know if Drew and Alex were
 13 switched from hourly to salary at the same time
 14 you were?
 15 A. The three of us at the same time.
 16 Q. Do you know if the other drivers were
 17 still receiving pay by bag and mile?
 18 A. Yes. Yes, they were paid by mile and
 19 bag.
 20 Q. Is Alex still working as a driver?
 21 A. Yes.
 22 Q. Does he do that same shift as you?
 23 A. Well, he starts earlier because he uses
 24 his own car.
 25 Q. Do you know if he's part of this

[Page 63]

1 D. DeLarosa
 2 lawsuit?
 3 A. No, I don't know. I don't know.
 4 Q. You don't know?
 5 A. No. No, he's not -- he's not in this
 6 lawsuit.
 7 Q. Have you talked to him about this
 8 lawsuit?
 9 A. I've talked to them, but he doesn't want
 10 to be part of it, nor Drew, nor anybody else.
 11 Q. Do you ever receive any kind of warnings
 12 from Syed or Owen for the work you perform?
 13 A. They only warn me when -- I only get a
 14 warning when I don't deliver -- I don't deliver
 15 the correct bag to the correct address because
 16 sometimes they send you to so many different
 17 routes, and it's hard, but now I know them
 18 almost by memory, so --
 19 Q. What would they do to warn you?
 20 A. Well, it appears in the computer, you
 21 know, saying that there's a complaint from a
 22 client. They call me or send me a text, or
 23 they let me know where I drop off that bag.
 24 Q. Would this happen the following day?
 25 A. The following day.

[Page 64]

1 D. DeLarosa
 2 Q. Would they discipline you in any way?
 3 A. No. They just tell you, look, this is
 4 incorrect, this one's incorrect, it should be
 5 like that. Sometimes he becomes upset. Yeah,
 6 sometimes.
 7 Q. Did you ever have to pay anything if you
 8 performed a wrong delivery?
 9 A. No, but they're starting to institute
 10 that now.
 11 Q. You never had to pay for --
 12 A. No.
 13 Q. Have you ever been given less routes if
 14 you made a bad delivery?
 15 A. No.

MR. POLLACK: I have no further
 questions. Thank you.

(Continued on the next page
 to accommodate the jurat.)

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1 D. DeLarosa
 2 MR. ANDREWS: I don't have any
 3 further questions.
 4 (Time Noted: 3:42 p.m.)
 5

DENNY DELAROSA

Subscribed and sworn to before me
 this ____ day of _____ 2013.

Notary Public

[17] (Pages 62 to 65)

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1

2 C E R T I F I C A T E

3

4 I, MELISSA KAHANE, hereby certify that

5 the Examination Before Trial of DENNY DELAROSA

6 was held before me on the 28th day of October,

7 2013; that said witness was duly sworn before

8 the commencement of his testimony; that the

9 testimony was taken stenographically by myself

10 and then transcribed by myself; that the party

11 was represented by counsel as appears herein;

12 That the within transcript is a true

13 record of the Examination Before Trial of said

14 witness;

15 That I am not connected by blood or

16 marriage with any of the parties; that I am not

17 interested directly or indirectly in the

18 outcome of this matter; that I am not in the

19 employ of any of the counsel.

20 IN WITNESS WHEREOF, I have hereunto set

21 my hand this 31st day of October, 2013.

22

23 _____

24 MELISSA KAHANE

25

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